JUN 23 1972

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

STATE OF ILLINOIS,
Movant-Plaintiff,
vs.
STATE OF MICHIGAN,
Defendant.

No. 57 Original

MOTION FOR LEAVE TO FILE COMPLAINT
and
COMPLAINT

WILLIAM J. SCOTT
Attorney General of the State of Illinois
Counsel for Movant-Plaintiff

ROBERT J. O'ROURKE
First Assistant Attorney General

JOSEPH B. LEDERLEITNER
Special Assistant Attorney General
100 W. Monroe Street
Chicago, Illinois 60603
(312) 346-1973
Of Counsel

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

STATE OF ILLINOIS, *Movant-Plaintiff,* vs. STATE OF MICHIGAN, *Defendant.*	No.	Original

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Illinois, by its special assistant attorney general, invokes the original jurisdiction of this Court and asks leave of this Court to file a Complaint, submitted herewith, against the State of Michigan.

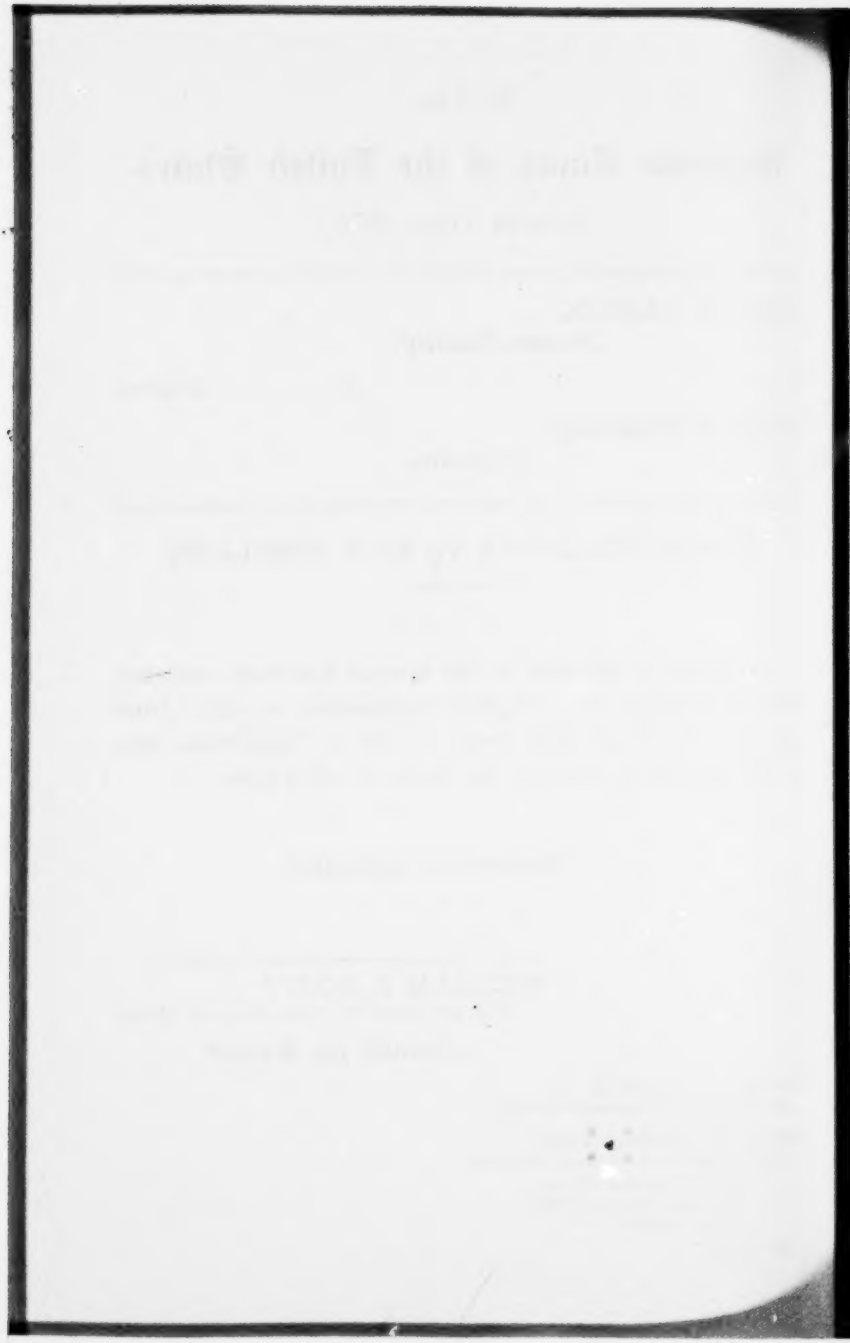
Respectfully submitted,

.....

WILLIAM J. SCOTT
Attorney General of the State of Illinois
Counsel for Movant

ROBERT J. O'ROURKE
First Assistant Attorney General

JOSEPH B. LEDERLEITNER
Special Assistant Attorney General
100 W. Monroe Street
Chicago, Illinois 60603
(312) 346-1973
Of Counsel



STATEMENT IN SUPPORT OF MOTION

The State of Illinois in its sovereign capacity seeks to file an original action in this Court against the State of Michigan, under the authority of Article III, Section 2 of the Constitution of the United States arising out of the State of Michigan's violation of a reciprocal treaty and a disregard of an Illinois judicial injunction with respect to the liquidation by Illinois of a domestic insurance company.

The complaining state, Illinois, has thus suffered a wrong in its sovereign capacity through the action of the defending state, Michigan, furnishing ground for judicial redress. *New York* v. *Illinois,* 274 U.S. 488; *Texas* v. *Florida,* 306 U.S. 398; *Florida* v. *Georgia,* 52 U.S. 293.

Contrary to the reciprocal treaty by which both party states have adopted uniform laws respecting liquidation of Insurance Companies and contrary to a specific injunction of an Illinois Court (entered in the liquidation of a domestic insurance company) prohibiting action against the proceeds of a reinsurance contract between the insolvent insurer (Highway Insurance Company) and its reinsurer (Peerless Insurance Company), the defendant state of Michigan has allowed a direct action and recovery by two workmen's compensation claimants (Jack Federoff and John Shannon) directly against the proceeds of the reinsurance contract. This is in derogation of the reciprocal treaty between Illinois and Michigan, the Illinois injunction and the rights of the Illinois

Liquidator of the insolvent insurer, as well as of the other claimants in the Illinois Liquidation Proceedings. Involved is the effectiveness of an Illinois injunction, the binding effect of a reciprocal treaty between Illinois and Michigan and reinsurance proceeds exceeding a half a million dollars.

This Court has exercised jurisdiction over suits between states in controversies to restrain a breach of treaty or contract between states, and to obtain specific performance thereof. *Kentucky* v. *Indiana,* 281 U.S. 163. This Court has also entertained jurisdiction in suits between states to enjoin the enforcement of a law of one state which would allegedly cause injury in an area in which the complaining state has a legitimate interest. *Pennsylvania* v. *West Virginia,* 262 U.S. 553.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

STATE OF ILLINOIS, *Plaintiff*,

vs.

STATE OF MICHIGAN, *Defendant*.

No. _____ Original

COMPLAINT

Now comes the State of Illinois and complaining of the State of Michigan alleges:

1. The plaintiff is the State of Illinois and the defendant is the State of Michigan, both being states of the United States of America.

2. Jurisdiction of this Supreme Court of the United States is invoked under and pursuant to Article III, Section II of the Constitution of the United States, and pursuant to 28 U.S.C. §1251(a)(1).

3. The plaintiff alleges that James Baylor is the successor in office to John F. Bolton, Jr. the prior Director of Insurance, of the State of Illinois, and is the existing executive officer in charge of the Department of

Insurance as its Director and in charge of the Bureau of Liquidations as the Liquidator of Illinois Insurance Companies which are insolvent.

4. That at all times pertinent hereto James Baylor, is the official and duly appointed Liquidator of Highway Insurance Company, an insolvent Illinois Insurance Corporation, hereinafter referred to as "Highway."

5. That "Highway" was and is reinsured by the Peerless Insurance Company, hereinafter referred to as "Peerless", and the latter in turn was and is reinsured by Excess Insurance Company, Ltd., hereinafter referred to as "Excess".

6. That Peerless Insurance Company is a New Hampshire corporation with principal office and place of business in New York, and Excess Insurance Company, Ltd. is not an Illinois corporation and its principal office and place of business is other than in Illinois.

7. That at all times pertinent hereto, Jack Federoff was the employee of William J. Ewing, d/b/a Ewing Roofing & Sheet Metal Company, and both are citizens of the State of Michigan and neither is a citizen of the State of Illinois.

8. That at all times pertinent hereto, John H. Shannon was the employee of Star Wrecking Company, Inc., a Michigan corporation, and both are citizens of the State of Michigan and neither is a citizen of the State of Illinois. Star Wrecking Company is a Michigan corporation and does not have its principal office and place of business in Illinois.

9. That Jack Federoff has claimed Workmen's Compensation from his employer, William J. Ewing, and John H. Shannon has claimed Workmen's Compensation from his employer, Star Wrecking; that these respective employers have workmen's compensation policies covering said claims and these policies were issued by Highway and reinsured, by Peerless and Excess.

10. That the insurance and reinsurance contracts involved were entered into, executed and issued in the State of Illinois.

11. That the liquidation of Highway was commenced and is pending in the Circuit Court of Cook County, Illinois, under No. 67 CH 3390, and prior to the determination of the instant workmen's compensation claims of Federoff and Shannon, namely on July 6, 1967 and July 28, 1967 nunc pro tunc as of July 6, 1967 and on March 20, 1969, the Chancellor entered specific injunctions in aid of his jurisdiction in the Liquidation Proceedings. A true and correct copy of said injunctions are attached and incorporated as pleading Exhibits A, B and C.

12. That at all times pertinent hereto there was in force and effect by reciprocal treaty in the States of Illinois and Michigan a statute entitled the "Uniform Provisions for Liquidation", Ill. Rev. Stats., Chap. 72, §833.1 et seq., under the terms and conditions of which it is the public policy of both states that *inter alia*, upon the entry or an order of liquidation, no levies, garnishments, attachments, executions or other proceedings shall be commenced against the delinquent insurer or its assets in the reciprocal state. Chap. 73, §833.9. The section reads as follows:

"833.9 §221.9 Attachment and garnishment of assets.) In the event of the commencement of delinquency proceedings in any reciprocal state no action or proceeding in the nature of an attachment, garnishment, execution or otherwise, shall be commenced in the courts of this state against such delinquent insurer or its assets. Added by act approved July 21, 1941. L. 1941, vol. 1, p. 832."

The declaration of purpose expressed in the statute is as follows: (§833.10)

"833.10 §221.10 Declaration of purpose.) The purpose of Sections 221.1 to 221.10 both inclusive is to promote uniformity in the liquidation, rehabilitation, reorganization or conservation of insurers doing business in more than one state. It is intended that Sections 221.1 to 221.10, both inclusive shall be liberally construed to the end that so far as possible the assets of such insurers shall be equally and uniformly conserved in all states, and that claimants against insurers shall receive equal and uniform treatment irrespective of residence or the place of the acts or contracts upon which their claims are based. The provisions of Sections 221.1 to 221.10, both inclusive shall be effective only with respect to this state and other states in which (a) it is provided by law that only the Insurance Commissioner or equivalent supervisory official of the State shall be vested with title to the assets of, and shall wind up the affairs of, delinquent insurers under judicial supervision; and (b) in substance and effect the provisions of Sections 221.1 to 221.10, both inclusive, are in force. The provisions of Sections 221.1 to 221.10, both inclusive, insofar as applicable to any insurer incorporated or organized in a foreign country, shall apply only to the assets, liabilities and business of such insurer within the several states. Added by act approved July 21, 1941. L. 1941, vol. 1, p. 832."

That other provisions of the Illinois Insurance Code, Chapter 73, also provide for liquidation of domestic insurance companies by Illinois Courts under the auspices of the plaintiff herein.

13. That notwithstanding said Illinois law and the reciprocal treaty statute quoted and cited herein and their applicability to the instant facts, the Michigan Supreme Court has rendered a decision authorizing and approving the determination of the liability of Highway and its reinsurers and of rights to the assets of Highway in a manner inconsistent with, contrary to and in flagrant disregard of Illinois law and denying said Illinois the full faith and credit which Article IV, Section 1 of the U.S. Constitution requires. A true and correct copy of said opinion of the Michigan Supreme Court is attached hereto and incorporated herein as pleading Exhibit D. This position of the State of Michigan is in conflict with judicial interpretation of the reciprocal treaty statute in other states. *State* v. *Preferred Accident. Ace Grain* v. *Rhode Island Ins. Co.*, 107 Fed. Supp. 80 (D.C., N.Y., 1952); *Janak* v. *Allstate Ins. Co.*, 319 F. Supp. 215 (D.C. Wisc., 1970). See also: *State* v. *Preferred Accident Ins. Co.*, 149 So. (2d) 632 (La., 1963).

14. That the denial of full faith and credit to the Illinois laws cited and quoted herein, as alleged and applicable to facts pleaded herein, also operates to grant such Michigan citizens as Jack Federoff and John H. Shannon, and their employers, privileges and immunities not accorded to Illinois citizens who are also claimants against Highway and its assets, and said refusal to grant Illinois law full faith and credit also deprives the plaintiff of the due process of law which it

is entitled to as party litigant in the courts of this country.

15. That the denial of full faith and credit to the Illinois laws cited and quoted herein as alleged and applicable to the facts pleaded herein, also operates to impair the obligations of the insurance and reinsurance contracts involved by reading into them diametrically opposite and inconsistent laws and statutes.

16. That a justiciable controversy exists between the plaintiff and the defendant and perhaps others who are as yet unnamed.

17. That the acts and conduct of the defendant alleged herein and such rulings as have been made are null and void because violative of the full faith and credit clause, the prohibition against impairment of the obligation of contracts and the other constitutional provisions alleged herein.

18. That unless this Court enters an order enjoining the holding of further proceedings and the taking of any further action by or on behalf of defendant, and the rulings made with respect thereto, until this Court can determine whether said actions are null and void, the plaintiff (and citizens of the State of Illinois) will be irreparably damaged without adequate remedy at law.

19. That upon the entry of such protective orders as are necessary in aid of this Court's jurisdiction, the facts alleged warrant an early determination of the respective rights and obligations of the parties herein.

20. That the plaintiff has no other adequate remedy whether at law, in equity or otherwise.

Wherefore, the plaintiff prays that this Court enter orders:

1) Allowing the addition of such other parties as the Court may deem necessary to a complete determination of the controversy and to order service of summons in accordance therewith;

2) Enjoining the defendant and all other parties and everyone else from taking any action in the premises until this Court can proceed to a determination of the issue of whether the action and conduct alleged is null and void and in violation of substantial constitutional provisions;

3) Granting such other and further primary relief and in aid of jurisdiction as this court may deem meet;

4) Determining the rights of the parties as follows:

(a) That the reciprocal treaty between Illinois and Michigan be held binding upon the State of Michigan and that the State of Michigan must abide by its terms. The Illinois Liquidation Proceedings of Highway Insurance Company conducted under the Insurance Code pertaining to liquidation of domestic insurance companies, being Chapter 73, and particularly the "Uniform Provisions for Liquidation" portions thereof, and the order of Chancellor O'Brien entered therein is entitled to full faith and credit by the Judicial Courts and Workmen's Compensation Tribunals of the State of Michigan;

(b) That the determination of the rights of Jack Federoff and John H. Shannon and their respective employers and of the plaintiff by the Workmen's

Compensation tribunal and Judicial Court of the State of Michigan is null and void as to the Liquidator and the Reinsurers.

(c) That the determination respecting the rights and liabilities of Highway, Peerless, Excess and of the plaintiff is null and void;

(d) That the order of Illinois Chancellor O'Brien in the Highway liquidation proceedings be enforced according to its terms and that this Court enter such orders in aid of jurisdiction as is necessary to give it full faith and credit;

(e) That the defendant and the workmen's compensation claimants be relegated to such rights and liabilities as any of them may have under Illinois law and as is enforceable in the Liquidation Proceedings in accordance with the applicable Illinois law.

Respectfully submitted,

.....

WILLIAM J. SCOTT
Attorney General of the State of Illinois
Counsel for Plaintiff

ROBERT J. O'ROURKE
First Assistant Attorney General

JOSEPH B. LEDERLEITNER
Special Assistant Attorney General
100 W. Monroe Street
Chicago, Illinois 60603
(312) 346-1973

Of Counsel

PROOF OF SERVICE

I, JOSEPH B. LEDERLEITNER, Special Assistant Attorney General of the State of Illinois and a member of the Bar of the Supreme Court of the United States hereby certify that on the 22nd day of June, 1972, I served copies of the foregoing Motion for Leave to file Complaint and the Complaint on the Governor and Attorney General of the State of Michigan by depositing 5 copies in a United States post office or mail box, as certified mail, return receipt requested with air mail postage prepaid and addressed to:

HONORABLE GEORGE MILLIKEN
Governor of Michigan
State Capital Building
Lansing, Michigan

HONORABLE FRANK J. KELLEY
Attorney General of Michigan
525 W. Ottawa
Lansing, Michigan

.....

JOSEPH B. LEDERLEITNER
Special Assistant Attorney General
State of Illinois

An Attorney for Plaintiff

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

No. 57 Orig.

SUPREME COURT (illegible)
FILED
AUG 10 1972
MICHAEL RODAK, JR., CLERK

FILED: 10-24-72

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

STATE OF ILLINOIS,
Movant-Plaintiff,

vs

STATE OF MICHIGAN,
Defendant.

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

KELMAN, LORIA, DOWNING & SCHNEIDER
By JOHN WILLIAM SIMPSON, JR.
Attorneys for John H. Shannon
2300 First National Building
Detroit, Michigan 48226
961-7363

Interstate Brief & Record Co., 1036 Beaubien St., Detroit, Michigan 48226
WO. 2-8745—WO. 2-8732

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

STATE OF ILLINOIS,
Movant-Plaintiff,

vs

STATE OF MICHIGAN,
Defendant.

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Now comes John H. Shannon, by his attorneys Kelman, Loria, Downing & Schneider, and respectfully moves this Court for leave to file a brief in this case as *amicus curiae* pursuant to Supreme Court Rule 42(3). The consent of the attorney for defendant State of Michigan has been obtained, but the attorney for movant-plaintiff State of Illinois has refused to consent to the filing of a brief by John H. Shannon as *amicus curiae*. John H. Shannon respectfully represents as follows:

1. Short Statement of Proceedings and Facts:

a) John H. Shannon, a resident of Michigan, is paralyzed from the waist down as a result of injuries sustained in a fall in the course of his employment on September 1, 1959, when he fell from a roof in Pontiac, Michigan, while working for a Michigan employer, Star Wrecking Company. Star Wrecking Company had entered into, in Michigan, a contract of workmen's compensation insurance, subject to Michigan law, with Highway Insurance Company, an Illinois corporation (referred to hereinafter as "Highway").

b) Because of contracts of excess insurance entered into between Highway and Peerless Insurance Company, a Connecticut corporation (hereinafter referred to as "Peerless"), and between Peerless and Excess Insurance Co., Ltd. (hereinafter referred to as "Excess"), Highway was permitted, by Illinois law, to set its applicable reserve at a mere $25,000.00 when Mr. Shannon became paralyzed as a result of his fall, without reserving a realistic amount while it was then solvent for the protection of Mr. Shannon.

c) In June of 1967, Highway was declared insolvent and placed into the hands of a statutory liquidator, the director of the Department of Insurance of the State of Illinois. By this time, Highway had exhausted its retention and Peerless had taken effective control over the risk.

d) Proceedings involving the two excess carriers initiated in Michigan in 1967 and 1968. This litigation was appealed through the Court of Appeals for the State of Michigan and to the Michigan Supreme Court. The two excess insurance companies and the statutory liquidator for the State of Illinois participated fully in these proceedings and defended against the assertions made against them.

e) In 1969 an *ex parte* injunction was entered by the Circuit Court of Cook County, Illinois enjoining in general all proceedings in other states and forums without naming John H. Shannon or his employer or any officer of the State of Michigan and without providing any prior notice or opportunity to be heard.

f) Pending the decision of the Michigan Supreme Court, an interpleader action was filed by Peerless in Federal District Court in the Eastern District of Michigan, which interpleader was dismissed upon Motion of John H. Shannon. No Appeal was taken by Peerless from such dismissal.

g) On December 21, 1971, the Michigan Supreme Court ruled that the contracts of excess insurance specifically incorporated the Michigan Workmen's Compensation Act and that any provision in the excess insurance contracts, inconsistent with the Michigan Workmen's Compensation Act, would be stricken from the policy, leaving the remaining portion of the contract applicable to the prompt enforcement of John Shannon's rights, 386 Mich 474 (1971) (Exhibit D to movant's complaint). Up to this time, John H. Shannon had never been formally named in or served with any injunction or restraining order from any Illinois

court, or provided any prior notice of any injunctive proceedings in Illinois.

h) Following the decision of the Michigan Supreme Court in which litigation the statutory liquidator for the State of Illinois and the two excess insurance companies had fully participated, the statutory liquidator and the excess insurance companies both failed and neglected to apply for writ of certiorari to the United States Supreme Court and the Michigan decision became final.

i) Pursuant to the final decision of the Michigan Supreme Court, John H. Shannon filed a petition for hearing before the Michigan Workmen's Compensation Bureau seeking to obtain, among other things, reimbursement for his medical expenses as against the excess carriers.

j) Thereafter, Peerless Insurance Company instituted another interpleader action, this time in the Federal District Court in Chicago, obtaining another *ex parte* injunction. The State of Illinois filed its instant motion for leave to file complaint in the Supreme Court of the United States.

2. Nature of applicant's interest:

a) John Shannon's medical expenses and care remain uncompensated under the Michigan Workmen's Compensation Act. There is a possibility that the claim of the State of Illinois in the case currently proposed to be brought before this Honorable Court could result in the deprivation to Mr. Shannon of the benefits to which he is entitled under Michigan Law. Under the language of the Michigan Workmen's Compensation Law, benefits due to injured Michigan workmen from excess insurance cannot be an asset of an insolvent primary insurer. The excess insurance companies, having received Michigan premium dollars from a Michigan employer, insuring Michigan workmen under Michigan law and having assumed control of the risk on an

accident occurring in Michigan cannot dissolve this liability through an Illinois liquidation of an insolvent primary Illinois insurance carrier.

b) It has been adjudicated that the tribunal competent to establish the dollar value of this liability is the Michigan Workmen's Compensation Bureau, that matters conducted in the State of Michigan, have been properly brought in Michigan and acceded to jurisdictionally by the Director of Insurance for the State of Illinois, and have been litigated fairly and fully in the courts of Michigan. To allow this litigation to be reopened and collaterally attacked in other states and forums, possibly necessitating the appearance of an injured Michigan workman, a paraplegic, would permit the type of vexatious litigation and impose the kind of undue hardship upon Mr. Shannon that the laws of Michigan and decisions of the United States Supreme Court have sought to avoid.

3. Movant's discussion inadequate:

a) The motion and complaint filed by the State of Illinois argues that the decision of the Michigan Supreme Court is contrary to the Uniform Insurers Liquidation Act; however, the discussion of such contention is inadequate in that the judicial relief accorded John Shannon by the Michigan Supreme Court against the excess insurance carriers is not in any way inconsistent with the application of the Uniform Insurance Liquidation Act to Highway Insurance Company, the primary carrier. The insolvent carrier in this case is not Peerless or Excess, and the benefit of any insolvency proceeding should not attach to Peerless or Excess, which are entirely solvent and able to pay directly the liability they insured. Under the decision of the Michigan Supreme Court, Mr. Shannon seeks no money from Highway Insurance Company, since Highway had long ago exhausted its retention. Mr. Shannon is only seeking payment from the excess insurance carriers.

b) Similarly, the discussion of the movant State of Illinois leads one to think that injunctions had been properly obtained prior to the final determination of the Michigan Supreme Court, when in fact, all Illinois injunctions were *ex parte* without prior notice or opportunity to be heard or other semblance of due process.

c) The discussion of the movant-plaintiff infers that Michigan had no jurisdiction over the Illinois receiver but fails to mention that, the State of Illinois, through its Director of Insurance, had, on March 11, 1971, unequivocally consented to the jurisdiction of the Michigan Workmen's Compensation Department and sought an order in its favor from the Michigan Workmen's Compensation Department. It is incongruous that a Director of Insurance for the State of Illinois, having sought the protection of the Michigan Workmen's Compensation Department and submitted to its jurisdiction, and invoking the jurisdiction of the Michigan Workmen's Compensation Department in its behalf, now seeks to establish in the Supreme Court of the United States, through the Attorney General for the State of Illinois, that the Michigan Workmen's Compensation Department has no jurisdiction over it.

Wherefore, plaintiff John H. Shannon respectfully requests permission to file a brief *amicus curiae* on the merits.

Respectfully submitted,

JOHN W. SIMPSON, JR., for
KELMAN, LORIA, DOWNING &
SCHNEIDER
Attorneys for John H. Shannon
2300 First National Building
Detroit, Michigan 48226
961-7363

SUPREME COURT, U. S.
FILED
AUG 24 1972
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1972

STATE OF ILLINOIS, Movant-Plaintiff, vs. STATE OF MICHIGAN, Defendant.	No. 57 Original

On Motion for Leave to File Complaint
and Complaint

BRIEF FOR DEFENDANT IN OPPOSITION

FRANK J. KELLEY
Attorney General of
the State of Michigan

ROBERT A. DERENGOSKI
Solicitor General

HARRY G. IWASKO, JR.
Assistant Attorney General

Counsel for Defendant

Business Address:
525 West Ottawa Street
Lansing, Michigan 48913
(517) 373-1160

PRINTED BY SPEAKER-HINES AND THOMAS, INC., LANSING, MICHIGAN — 1972

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

STATE OF ILLINOIS, Movant-Plaintiff, vs. STATE OF MICHIGAN, Defendant.	No. ..... Original

On Motion for Leave to File Complaint
and Complaint

BRIEF FOR DEFENDANT IN OPPOSITION

OPINION BELOW

The opinion of the Supreme Court of the State of Michigan (Exhibit "D" to Complaint) is reported at 386 Mich 474, 192 NW 2d 242 (1971).

JURISDICTION

Movant-plaintiff invokes jurisdiction under Article III, § 2, of the Constitution of the United States, and pursuant to 28 U.S.C. § 1251 (a) (1), as a purported suit between two sovereign states. Defendant State of Michigan disputes

this original jurisdiction claim and asserts that the only proper procedure would be to seek this Court's writ of certiorari to the Supreme Court of the State of Michigan under 28 U.S.C. § 1257, assuming arguendo that movant-plaintiff was able to establish that it was entitled to such writ of certiorari.

QUESTION PRESENTED

Whether the issuance of an opinion by the Michigan Supreme Court results in the State of Michigan becoming a party in interest entitling the State of Illinois to invoke the original jurisdiction of the Supreme Court of the United States.

STATUTE AND REGULATION INVOLVED

The movant-plaintiff contends that the Uniform Insurers Liquidation Act adopted by the States of Michigan and Illinois constitutes a treaty between said states which has been breached by the decision of the Michigan Supreme Court. Defendant maintains that the only statutory provisions involved are Sections 1, 2 and 3 of Part IV of the Michigan Workmen's Compensation Act [MCLA §§ 414.1 through 414.3; MSA §§ 17.195 through 17.197] cited by the Michigan Supreme Court in its opinion attached as Exhibit "D" to the complaint.

STATEMENT

This "original" action is the outgrowth of protracted litigation brought by two permanently disabled Michigan workmen to recover for injuries sustained in the course

of their employment from the reinsurers of an insolvent Illinois insurance company which insured their employer's risk. In all the proceedings below, the two Michigan employees, Jack Federoff and John H. Shannon, were plaintiffs. The defendants below were their employers, the Director of the Illinois Department of Insurance as liquidator of Highway Insurance Company, the Peerless Insurance Company and the Excess Insurance Company, Ltd., reinsurors of the defunct Highway Insurance Company. At no stage in any proceeding was any officer of the State of Michigan a party in interest.

Following the adverse decision in the Michigan Supreme Court, none of the defendants attempted to file a petition for a writ of certiorari pursuant to 28 U.S.C. § 1257. The opinion of the Michigan Supreme Court was issued December 21, 1971, which is more than ninety (90) days prior to the filing of the plaintiff's complaint in this cause, and the period for applying for a writ of certiorari has not been extended by a Justice of this Court [U.S.C. Title 28, § 2101 (c) and Rule 22 of this Court].

ARGUMENT

I.

The attempt by the Director of Insurance of the State of Illinois to invoke the original jurisdiction of this Court must fail because there is at most only one sovereign state involved in this litigation.

The liquidator of the Highway Insurance Company is by law the Director of Insurance of the State of Illinois. In marshaling the assets of a defunct insurance company, such liquidators are often required to institute actions in

foreign states. However, in this instance the action which culminated in this appeal from a decision of the Michigan Supreme Court was originally instituted in the Michigan courts by two injured Michigan workmen against the two reinsurors of their coverage. The Illinois Director of Insurance participated fully in these proceedings at each level.

Inasmuch as this defendant was never a party to any of the proceedings, it has had to rely upon the statement of facts set forth in the motion for leave to file amicus curiae brief of John H. Shannon. Curiously enough, plaintiff State of Illinois seeks to bring an original action against the State of Michigan, which has never been involved in the proceedings, while it has refused John H. Shannon consent to file a brief as amicus curiae. The involvement of the State of Michigan is illusory, as no direct benefits or losses will inure to the State of Michigan should the Supreme Court of the United States review the decision of the Michigan Supreme Court.

The State of Michigan is not being called upon to defend the actions of one of its officers for the purported violation of the Uniform Insurors Liquidation Act, but instead is asked to defend a unanimous opinion of the Supreme Court of the State of Michigan, which does not even mention the Uniform Insurors Liquidation Act. Original jurisdiction may not be maintained because neither the requisite state action nor state interest exist. *Louisiana* v *Texas*, 176 US 16, 20 S Ct 251, 44 L Ed 347 (1900).

II.

A decision in this case would have narrow application to future insurance liquidation proceedings. Both the states

of Michigan and Illinois, as well as most major insurance states, have adopted guaranty association acts which protect insureds and persons who claim through them in the event of the insolvency of an insurer. The Michigan Property and Casualty Guaranty Association Act was adopted in 1969 [MCLA 500.7901 et seq; MSA 24.17901 et seq] while the State of Illinois adopted its Insurance Guaranty Fund Act in 1971 [SHA Chapter 73, § 1065.72 et seq]. These guaranty statutes eliminate the possibility that the insurance claims against an insolvent insurer will go unpaid. The net effect of this development is that cases such as those brought by John H. Shannon and Jack Federoff will no longer be necessary.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the motion for leave to file a complaint should be denied.

Respectfully submitted,

/s/ Frank J. Kelley
FRANK J. KELLEY
Attorney General of
the State of Michigan

/s/ Robert A. Derengoski
ROBERT A. DERENGOSKI
Solicitor General

HARRY G. IWASKO, JR.
Assistant Attorney General
Counsel for Defendant

Business Address:
525 West Ottawa Street
Lansing, Michigan 48913
(517) 373-1160

PROOF OF SERVICE

I, ROBERT A. DERENGOSKI, Solicitor General of the State of Michigan, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 22nd day of August, 1972, I served copies of the foregoing Brief for Defendant in Opposition on the Attorney General of the State of Illinois by depositing five (5) copies in a United States post office or mailbox, as certified mail, return receipt requested, with airmail postage prepaid and addressed to:

HONORABLE WILLIAM J. SCOTT
Attorney General of Illinois
100 West Monroe Street
Chicago, Illinois 60603

/s/ Robert A. Derengoski
ROBERT A. DERENGOSKI
Solicitor General
State of Michigan

An Attorney for Defendant

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

STATE OF ILLINOIS, *Movant-Plaintiff,* vs. **STATE OF MICHIGAN,** *Defendant.*	**No. 57 Original**

MOTION FOR LEAVE TO FILE REPLY BRIEF

Now Comes the State Of Illinois and moves the Court, pursuant to the case of *Alabama* v. *Texas*, 347 U.S. 272, for leave to file a Reply to the Brief of the State of Michigan.

Respectfully submitted,

William J. Scott

WILLIAM J. SCOTT
Attorney General of the State of Illinois
Counsel for Movant

ROBERT J. O'ROURKE
First Assistant Attorney General

JOSEPH B. LEDERLEITNER
Special Assistant Attorney General
100 W. Monroe Street
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Of Counsel

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Supreme Court of the United States

OCTOBER TERM, 1972

STATE OF ILLINOIS, *Movant-Plaintiff,* vs. **STATE OF MICHIGAN,** *Defendant.*	**No. 57 Original**

REPLY BRIEF OF STATE OF ILLINOIS

The defendant, State of Michigan, disputing the original jurisdiction of this Court, asserts that the only proper procedure would be for the plaintiff to seek a writ of certiorari from this Court to the Supreme Court of Michigan. This idea overlooks the fact that the plaintiff, State of Illinois, was not a party to the Michigan Proceedings and that the Illinois Director of Insurance as Illinois Liquidator of Highway Insurance Company is an entirely different

legal person and is not invoking the original jurisdiction of this Court and indeed could not do so. It should be noted, the caption of this case is not "Director" or "liquidator" but the "State of Illinois" in its sovereign capacity as represented by its Attorney General. Contrary to the defendant's contention, the State of Michigan becomes involved in these original jurisdiction proceedings as party in interest because of the claim of the State of Illinois that the State of Michigan has violated its reciprocal treaty with the State of Illinois and has disregarded Illinois laws and writs to the latter's irreparable detriment. Even in this Court the State of Michigan asserts and recognizes only its Workmen's Compensation Statute and wrongfully refuses to recognize, much less honor, its treaty obligations with the State of Illinois.

Since the State of Illinois was not a party to the Michigan proceedings, it is not bound thereby and could not seek review of the decision there made nor of the disregard of Illinois injunctions.

The State of Illinois has a sovereign interest in the obligations of treaties it enters into and also is concerned about the disregard of Illinois injunctions and laws by other states. While the State of Michigan claims that none of its officers were a party in interest, an appropriate branch of the government of the State of Michigan was notified of the treaty obligations and of the Illinois injunction, and the government of the State of Michigan thereupon proceeded to violate its treaty with Illinois and proceeded to flagrantly disregard Illinois law and writs.

Formerly wars were resorted to by sovereign states to resolve their differences. Now, in civilized society, orig-

inal jurisdiction of the United States Supreme Court has been substituted for war.

It is well known that the granting of certiorari by this Court is one of the most celebrated of uncommon occurrences. Knowing that, the State of Michigan indicates that it was "safe" in having its courts violate Illinois treaty and injunction because the chances of this Court's review are almost nil. Whether a treaty with Illinois is enforceable cannot rest upon the fortuitous circumstance of a grant of certiorari in a case in which the State of Illinois is not even a party. The sovereign rights of the State of Illinois deserve better than that, as Illinois is sure this Court would agree. Nothing less than a forthright honest deference to treaty obligations and a direct and certain enforcement of them will satisfy basic concepts of justice.

The State of Michigan argues that the decisions of its court must be obeyed. If that be so, what about the decisions of Illinois courts? Why may a prior Illinois injunction then be violated by Michigan? Why does Michigan have a right to flagrantly violate its treaty with Illinois and flagrantly disregard Illinois law and injunction and then demand deference to its decisions? The State of Michigan is not superior to the State of Illinois. Equality must be the keynote in relations between states or deterioration will result.

Illinois treaty and law and injunction have been first violated by Michigan in a most flagrant way. What is the State of Michigan going to do about this? Condone it? Excuse it? Approve it? And will this Court permit that? Can the Union survive such precedents? Is Michigan's callous concern with the question of whether it will sustain a bene-

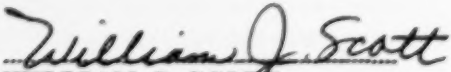
fit or a loss from these proceedings dispositive of the inherent justice of the case? If so, what of Illinois' sovereign rights, which formerly were protected by war and now are violated with impunity? Will this Court's original jurisdiction provide the catalyst? Or is this a grievance for which the State may find no redress under the system and form a basis of bad relations between two sovereign states? Must Illinois require a double payment from the reinsurer in order to enforce its rights?

While the State of Michigan recites the guaranty statutes that will prevent the instant problem from ever arising again, it would seem that there is nothing to prevent Michigan from violating those statutes as it has violated Illinois treaty, statute and injunction. Its pious recitations fall on deaf ears in Illinois because the action of the State of Michigan has spoken louder than its words. Moreover, Michigan's violation of Illinois treaty is, apart from the civil law aspects of the case, neither menial nor unimportant. Indeed, it is hoped that Michigan will never attempt another treaty violation.

The State of Illinois is confident that this court is concerned in preserving amicable relations between the states and that it will not permit procedure to insulate one state from the consequences of its treaty violations. History has shown that when a state's grievance is ignored and not redressed it often causes serious repercussions. Otherwise, each state must look hopelessly to a whole new concept of justice in its dealings with other states, and this may spell the ultimate death knell to the Union. No one state is more important than another state and the fabric of our jurisprudence must recognize this or defeat itself.

The State of Illinois is confident that this Court's concept of justice and of the preservation of the Union is not bogged down in procedural morass but is deeply concerned with a viable concept of justice that applies essential principles not only to ordinary citizens but to sovereign states as well.

Respectfully submitted,



WILLIAM J. SCOTT
Attorney General of the State of Illinois
Counsel for Plaintiff

ROBERT J. O'ROURKE
First Assistant Attorney General

JOSEPH B. LEDERLEITNER
Special Assistant Attorney General
100 W. Monroe Street
Chicago, Illinois 60603
(312) 346-1973

Of Counsel

PROOF OF SERVICE

I, JOSEPH B. LEDERLEITNER, Special Assistant Attorney General of the State of Illinois and a member of the Bar of the Supreme Court of the United States hereby certify that on the 7th day of September, 1972, I served copies of the foregoing Motion for Leave to file Reply Brief and the Reply Brief on the Governor and Attorney General of the State of Michigan by depositing 5 copies in a United States post office or mail box, as certified mail, return receipt requested with air mail postage prepaid and addressed to:

HONORABLE GEORGE MILLIKEN
Governor of Michigan
State Capitol Building
Lansing, Michigan

HONORABLE FRANK J. KELLEY
Attorney General of Michigan
ROBERT A. DERENGOSKI
Solicitor General
HARRY G. IWASKO, JR.
Assistant Attorney General
525 W. Ottawa
Lansing, Michigan

Joseph B. Lederleitner

JOSEPH B. LEDERLEITNER
Special Assistant Attorney General
State of Illinois

An Attorney for Plaintiff

FILE COPY

Supreme Court, U.S.
FILED
OCT 24 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 57 Original

STATE OF ILLINOIS,
Movant-Plaintiff,

vs.

STATE OF MICHIGAN
Defendant.

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF ON BEHALF OF JACK FEDEROFF AND WILLIAM F. EWING, D/B/A WILLIAM EWING ROOFING COMPANY

PAUL B. NEWMAN
Attorney for Jack Federoff
SEYMOUR MANDELL
Attorney for William F. Ewing
By: PAUL B. NEWMAN, Of Counsel
3110 Guardian Building
Detroit, Michigan 48226
961-6262

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 57 Original

STATE OF ILLINOIS,

Movant-Plaintiff,

vs.

STATE OF MICHIGAN

Defendant.

CONSENT OF DEFENDANT TO THE FILING OF AMICUS CURIAE BRIEF ON BEHALF OF JACK FEDEROFF AND WILLIAM F. EWING

Now comes the State of Michigan, defendant herein, by its attorney, Harry G. Iwasko, Jr., Assistant Attorney General, and consents to the filing of an amicus curiae brief by Paul B. Newman, attorney on behalf of Jack Federoff, and of counsel to Seymour Mandell, attorney for William F. Ewing, in the above entitled cause.

HARRY G. IWASKO, JR.
Assistant Attorney General
525 West Ottawa Street
Lansing, Michigan 48913
373-1160

Dated: July 12, 1972.

MOTION FOR LEAVE TO FILE AMICUS BRIEF

Now comes Jack Federoff, by Paul B. Newman, his attorney, and William F. Ewing, doing business as William Ewing Roofing Company by Seymour Mandell, Paul B. Newman, Of Counsel, and respectfully moves this Court for Leave to File a Brief in this case as *Amicus Curiae,* pursuant to United States Supreme Court Rule 42(3). The consent of the attorney for the defendant, State of Michigan, has been obtained, a copy of which is attached hereto, made a part hereof, and to which reference is prayed, but the Attorney for the Movant-Plaintiff, State of Illinois, has refused to consent to the filing of a Brief by these parties as *Amicus Curiae.* Petitioners respectfully represent as follows:

1. Statement of Proceedings

A. Jack Federoff, a resident of the State of Michigan, was in the employ of William F. Ewing, doing business as William Ewing Roofing Company, a Michigan employer, and while being employed in the State of Michigan, on September 6, 1960, fell through the roof of a building under construction and as a result of the injuries sustained, became permanently paralyzed from the neck down.

B. The employer had entered into a contract of Workmen's Compensation Insurance, subject to Michigan law, with the Highway Insurance Company, an Illinois corporation.

C. Prior to the issuance of the policy of Workmen's Compensation Insurance by Highway Insurance Company, Highway Insurance Company entered into a contract of re-insurance with the Peerless Insurance Company, a Connecticut corporation. Pursuant to the terms of the re-

insurance agreement, Highway Insurance Company retained an exposure of $25,000 on any specific loss subsequently suffered, and Peerless Insurance Company, for a percentage of the premiums received, agreed to pay any specific loss in excess of the exposure of Highway Insurance Company. Other pertinent provisions of the reinsurance agreement were that Peerless Insurance Company retained the right to decline any risk, Peerless Insurance Company retained the right to adjust any claim, participate in any suit, and no judgment could be entered against an Insured of the Highway Insurance Company in excess of $25,000 unless Peerless Insurance Company consented to the matter going to trial. In the event of the insolvency of Highway Insurance Company, the full amount of any covered claim allowed would be paid by the Peerless Insurance Company to the Liquidator. Peerless Insurance Company's obligation followed that of the Highway Insurance Company in all respects, and was subject to all terms and conditions of the policy Highway Insurance Company had issued to its insured.

D. The Highway Insurance Company, upon notification of the injury to Jack Federoff, immediately and voluntarily undertook payment of Workmen's Compensation benefits and medical expenses. By 1962, they had expended the total amount of their reserve, and pursuant to the reinsurance agreement, continued to pay benefits, but, in turn, sought reimbursement for all losses from Peerless Insurance Company. Subsequently, and also pursuant to the re-insurance agreement, Peerless Insurance Company filed a Petition before the Michigan Workmen's Compensation Bureau in the name of Highway Insurance Company, for certain relief. They later required a physical examination of Jack Federoff by a physician of their own choice, again in the name of Highway Insurance Company.

E. In June of 1967, upon the insolvency of Highway Insurance Company, compensation payments and payment of medical expenses stopped. In 1968, a supplementary Petition was filed in the Michigan Workmen's Compensation Bureau by Jack Federoff. A Hearing Referee found Jack Federoff entitled to continuing benefits, and that he was totally and permanently disabled. The employer sought an appeal before the Appeal Board of the Workmen's Compensation Bureau. While before the Appeal Board, the employee made a Motion to add Peerless Insurance Company as a party defendant, joined by the employer in the Motion. Peerless Insurance Company appeared specially and contested the Motion. The Appeal Board found that Peerless Insurance Company was a proper party defendant, and that Michigan law required Peerless Insurance Company to continue the benefits afforded to Jack Federoff by the Michigan Workmen's Compensation Act. They further found that payments be made directly to Jack Federoff, as the provisions of the reinsurance agreement to the contrary were void as a matter of Michigan law. The Appeal Board also held that, inasmuch as Highway Insurance Company was still a party to the proceedings, they should have received notice of the Hearing before the Referee. The matter was remanded back to the Referee to afford Highway Insurance Company, or its successor, the Liquidator, and the Peerless Insurance Company an opportunity to be heard.

F. Both Peerless Insurance Company and the Liquidator of Highway Insurance Company sought an appeal to the Michigan Court of Appeals (an intermediate appellate Court). The two appeals were consolidated, and in turn, this proceeding was consolidated with the appeal of John H. Shannon, also pending before that Court. The Liquidator and Peerless Insurance Company participated

in the joint appeal, and contested the matter on its merits. The Michigan Court of Appeals found in favor of Jack Federoff and John H. Shannon.

G. Both Peerless Insurance Company and the Liquidator of Highway Insurance Company appealed the decision to the Michigan Supreme Court. The issues on appeal were the right of Jack Federoff and John H. Shannon to receive payments directly from Peerless Insurance Company, in spite of Peerless Insurance Company's contractual obligation to pay the Liquidator; the full faith and credit which should be afforded to judicial decrees of the Circuit Court in Illinois involving the liquidation proceeding, and Illinois statutes, interstate comity; the immunity of the Liquidator from suit (as an officer of the State of Illinois); and the deprivation of due process in depriving the Liquidator, as successor of Highway Insurance Company and Peerless Insurance Company of valuable property and contract rights. The Michigan Supreme Court found in favor of Jack Federoff and John H. Shannon, and remanded the respective matters to the lower tribunal from which they originated for further proceedings.

H. In view of the Federal constitutional issues raised by both the Liquidator and Peerless Insurance Company in the proceedings before the Michigan Supreme Court, Leave for Certiorari to the United States Supreme Court was available to both of these parties. No application for such leave was made by either of the aggrieved parties.

2. Nature of Applicants Interest

Both Jack Federoff and William F. Ewing have prevailed in bringing the re-insurer into the Workmen's Compensation proceedings, with a ruling that Peerless Insurance Company had re-insured a part of the Workmen's Compensation insurance policy issued by the Highway Insurance Company to William F. Ewing, and covering the injury to Jack Federoff. Peerless Insurance Company will be required to assume the obligation of William F. Ewing to pay Workmen's Compensation benefits to Jack Federoff. It is this decision which the State of Illinois wishes to have held null and void. It should be obvious that if this Court would see fit to hold such a decision null and void, both Jack Federoff and William F. Ewing would suffer a severe financial loss. They are the litigants who have prevailed in this matter, and if anyone were to be added as parties to this suit, as requested by the State of Illinois, they are the most likely ones in the mind of the attorneys representing the State of Illinois. This proceeding is merely another in a long line of vexacious proceedings brought by the various parties interested in the result of the proceedings in the State of Michigan, and are another attempt to disregard the effect of that decision.

3. Inadequacy of the Discussion by the Movant-Plaintiff

A. The liquidator of Highway Insurance Company is an officer of the State of Illinois. He is the Commissioner of Insurance of that State. Insolvency of insurance companies in the State of Illinois occur with such frequency that this State has seen fit to create a separate department known as the Bureau of Liquidations, and charged it with the duties of overseeing and managing the liquidation of

the numerous insurance companies that become insolvent in the State of Illinois. In appearing and contesting the merits of the litigation in Michigan, the Liquidator is a representative of the State of Illnois. The issue of a violation of a treaty between the State of Illinois and the State of Michigan was never raised by the Liquidator in the Michigan proceedings, and this issue is raised for the first time in the instant proceedings.

B. In 1969, while the controversy pending in the Michigan Appellate Courts as to whom was entitled to receive payment from the Peerless Insurance Company as the result of the tragic losses of Jack Federoff and John H. Shannon, a petition was filed by the Liquidator and an Order entered by the Cook County Circuit Court, where the liquidation proceedings were pending. The Order declared that the proceeds of the re-insurance agreement between Highway Insurance Company and Peerless Insurance Company were assets of Highway Insurance Company. The Order also restrained anyone from pursuing any litigation to reach these assets, and further enjoined any Workmen's Compensation Bureau from ordering any payment directly from Peerless Insurance Company to any employee. The petition was never served on Jack Federoff or John H. Shannon, their employers, or the Michigan Workmen's Compensation Bureau. No notice of hearing was given, nor any Order to Show Cause why such an Order should not be entered. The Order was never served on any party whose rights were obviously intended to be affected by this Order. No opportunity was ever afforded anyone to appear and contest the ex parte adjudication that the proceeds of the re-insurance agreement belonged to the Liquidator. The only time the attorneys for these employees and employers were made aware of the existence of the Order was in 1971, when a copy was included in the

Appendix to the Brief on Appeal of the Peerless Insurance Company. It is this ex parte Order, issued with a total absence of due process, that the State of Illinois insists was ignored and violated by the decision of the Michigan Supreme Court.

C. The Peerless Insurance Company has filed an interpleader in the Federal District Court for the Northern District of Illinois, complaining that the Liquidator has refused to abide by the Michigan Supreme Court decision. The Liquidator has filed a counter-claim in this proceeding, claiming a right to the proceeds and that the Michigan decision is null and void. Thus, while one branch of the government of the State of Illinois is forcing the Peerless Insurance Company into a relitigation of the issues resolved by the Michigan Supreme Court decision before a new tribunal, another branch of that State government appears before this Court and seeks a similar remedy. They allege a new and different theory for relief, i.e., violation of a treaty, which was never raised in the earlier proceedings, and has not been raised in the proceedings before the Federal District Court for the Northern District of Illinois. Such a position could never have been raised on a direct appeal to this Court from the final decision of the Michigan Supreme Court.

D. The enactment of "Uniform Acts" by a State may give rise to the desire of a sister State to enact a similar "Uniform Act." In many instances, by the separate acts of sister states, reciprocity in certain areas may be created. This does not give the individual acts of State Legislatures the exalted status of a treaty. There is no treaty between the State of Illinois and the State of Michigan regarding the matter complained of. Each state has merely

enacted a form of a "Uniform Act" involving the disposition of insolvent insurance companies. Such an occurrence cannot require the Courts of one State to interpret the "Uniform Act" to the pleasure of another State, and subvert its interpretation of its own public policy to the satisfaction of a sister State.

E. The State of Illinois does not mention the intended disposition of the proceeds of the re-insurance policy. In the instant cases, the right of the Liquidator to receive money under the terms of its agreement with the Peerless Insurance Company is incohate. Without the filing of a claim by Jack Federoff and John H. Shannon in the liquidation proceedings, the liquidator could not invoke or require the Peerless Insurance Company to pay any sums to the Liquidator specifically for these losses. By the terms of the re-insurance agreement, only the filing of a claim by these injured employees gives rise to an obligation of the Peerless Insurance Company to pay money to the Liquidator. The Liquidator has consistently taken the position that in the event this takes place, the amount of money which the Liquidator would be entitled to receive, only as a result of the filing of these claims, would belong to the general creditors of Highway Insurance Company, two of whom would be Jack Federoff and John H. Shanson. The Liquidator has totally and completely refused to acknowledge that the purpose of acquiring the re-insurance agreement was to create funds with which to pay unusually large claims against Highway Insurance Company. The liquidator further refuses to acknowledge the right of these employees to have the proceeds provided for them with a percentage of the premium dollars paid by their employers to purchase this protection. The Liquidator has consistently refused to recognize the decisions rendered against him in the proceedings in which he participated.

By bringing this suit, the State of Illinois wishes to have the decision of the Michigan Supreme Court held null and void. The immediate benefits of such a ruling would be to the Liquidator, and adverse to the interests of Jack Federoff, John H. Shannon, and their employers. Further, this suit would accomplish indirectly that which the Movant-Plaintiff, by and through its officer, the Liquidator, could not do directly. The Liquidator came to the State of Michigan, one must assume in good faith, participated in its Court proceedings and lost. The government which he represented is not satisfied with the final decision of the Michigan Supreme Court, and is not satisfied with following the usual procedural methods by which this Court might have agreed to review the matter. The effect of these proceedings, should the Movant-Plaintiff have his way, would be to void a decision properly arrived at by the Michigan Supreme Court.

Wherefore, Jack Federoff and William H. Ewing respectfully request permission to file Amicus Curiae Briefs and pleadings in opposition for the Motion of the State of Illinois for relief to file Complaint against the State of Michigan, and should the Court grant such a Motion, to file pleadings and Amicus Curiae Briefs on the merits of the matter.

Respectfully submitted,

PAUL B. NEWMAN
Attorney for Jack Federoff
SEYMOUR MANDELL
Attorney for William F. Ewing
PAUL B. NEWMAN, *of Counsel*
By: /s/ Paul B. Newman
3110 Guardian Building
Detroit, Michigan 48226
961-6262

ILLINOIS *v.* MICHIGAN

ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

No. 57, Orig. Decided October 24, 1972

The failure of the State of Illinois to petition for a writ of certiorari with respect to an adverse Michigan Supreme Court decision in a case to which Illinois was a party "vindicat[ing] . . . grievances of particular individuals" precludes recourse to this Court's original jurisdiction as an alternative to normal appellate review.

Motion denied. See 386 Mich. 474, 192 N. W. 2d 242.

PER CURIAM.

The State of Illinois moved to file its bill of complaint in this case on the theory that a "reciprocal treaty" between the States of Illinois and Michigan was violated by a decision of the Supreme Court of the State of Michigan which allowed recovery by two injured workmen against an Illinois re-insurance company. *Federoff* v. *Ewing*, 386 Mich. 474, 192 N. W. 2d 242 (1971). It claims that such an agreement arose when the two States enacted the Uniform Insurers Liquidation Act, which contains certain reciprocal features, and that the agreement has the dignity of an interstate compact.*

The State of Illinois was a party to the case decided by the Supreme Court of Michigan through the person of the Director of Insurance of the State of Illinois, who was the liquidator of the workmen's compensation insurer, Highway Insurance Co. It was the imposition of

*See generally Frankfurter & Landis, The Compact Clause of the Constitution—a Study in Interstate Adjustments, 34 Yale L. J. 685 (1925); Engdahl, Characterization of Interstate Arrangements: When is a Compact not a Compact?, 64 Mich. L. Rev. 63 (1965); Note, At the Intersection of Jurisdiction and Choice of Law, 59 Calif. L. Rev. 1514 (1971).

liability upon that company's re-insurer which Illinois claims was inappropriate under the uniform act. Review of the Michigan decision should have been sought in that case by means of a petition for writ of certiorari.

It is now too late for any such petition for certiorari to be filed. But original jurisdiction of the Court is not an alternative to the redress of grievances which could have been sought in the normal appellate process, if the remedy had been timely sought.

The problem presented is essentially one between private litigants and, though the point now raised may not have been presented in the Michigan litigation, these controversies are recurring and essentially not state concerns.

While the complaint on its face is within our original, as well as our exclusive, jurisdiction, it seems apparent from the moving papers and the response that Illinois, though nominally a party, is here "in the vindication of the grievances of particular individuals." *Louisiana* v. *Texas*, 176 U. S. 1, 16.

The motions to file briefs *amici curiae* by Jack Federoff, William F. Ewing, dba William Ewing Roofing Co., and John H. Shannon are granted.

The motion of the State of Illinois for leave to file a bill of complaint is denied.